Quotes from Judge Milton Hirsch's Order in State v. Quentin Wyche denying motion to dismiss on Stand Your Ground Immunity, Feb. 2012 (not in order)

Of course claims of justification must, as an almost invariable rule, be presented to the trier of fact at a trial on the merits. Whether a defendant was faced with circumstances that justified conduct that would otherwise be punishable turns upon the facts of the case, and **unless those facts are undisputed** any dispute must be resolved by the jury.

The "Stand Your Ground" law, however, does not speak the language of justification; it purports to speak the language of immunity. It does not provide a defense to criminal charges; it purports to provide immunity from criminal charges. It does not provide a defense at trial; it purports to provide a bar to trial, indeed even to arrest. This is the diacritical feature of the statutory scheme.

...Here we confront a novel feature of the "Stand Your Ground" law. The statute - the substantive law - provides that immunity attaches at, or even immediately prior to, the very moment of arrest. § 776.032, Fla. Stat. The defendant whose conduct is protected by "Stand Your Ground" should never be arrested at all, and of course none of the customary post-arrests steps in the criminal justice process should be visited upon him.

Unlike traditional forms of immunity, "Stand Your Ground" turns ....upon the factual merit of his claim of immunity. .... A "Stand Your Ground" claimant must - as a practical matter, although not in contemplation of law - endure arrest, pretrial procedure, discovery; and only then file and litigate his motion to dismiss. The best that can be said in an attempt to reconcile the substantive with the procedural law is that if it is determined at a 'Stand Your Ground" hearing that a defendant is immune by operation of the statute, his immunity relates back, *nunc pro tunc,* to the moment before his arrest.

Section 776.012, Fla. Stat., begins by stating the general rule: "A person is justified in using force, except *deadly force,* against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself." (e.s.1 The statute then provides the "Stand Your Ground" exception: "[A] person is justified in the use of deadly force. . . if. . . [h]e . . . reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself."

776.013(3), Fla. Stat., is to the same effect: "A person who is. . . attacked. . .has the right to stand his . . . ground and meet force with force, including deadly force, if he . . . reasonably believes it is necessary to do so to prevent death or great bodily harm to himself." These statutes, in conspicuous derogation of the common law, are to be strictly construed; and clearly, they do not purport to justify the use of deadly force in response to threats or shows of force of any and every kind. In ordinary circumstances a push or a slap may be met with a push or a slap, or perhaps with a punch --but not with a bullet, whether under "Stand Your Ground" or any other provision of Florida law.

An act of deadly force is the gravest act upon which the law can put its imprimatur. The defendant who claims the law's protection for his use of deadly force must show that his conduct comes within the narrow limits to which that protection extends. He must show, not that he was confronted with a latter-day version of Hamlet's and Laertes's threatening, posturing, and roughhousing, but that a reasonable person in his circumstances would have concluded that life itself hung in the balance. A defendant claiming immunity under "Stand Your Ground" bears the burden of proof. See Dennis, 51 So.3d at 459-60 (citing Peterson v. State, 983 So.2d 27, 29-30, (Fla. 1st DCA 2008) (citing People v. Guenther, 740 P.2d 971,976 (Colo. 1987)) (explaining that thedefendant must prove his entitlement to immunity by a preponderance of the evidence))

Hamlet and Laertes snap and snarl at one another, threatening violence and retribution of every kind. William Shakespeare, The Tragedy of Hamlet, Prince of Denmark, act V sc. 1. In some stagings of the play they wrestle briefly; in others they push and shove one another. But despite all the bluster, neither employs any real force or violence. And had Florida's "Stand Your Ground" law been in effect, neither would have been justified in doing so.

If, at a pretrial hearing, a defendant meets his burden and establishes his claim of immunity by a preponderance of the evidence, any charge as to which the immunity applies would of course be dismissed. If, however, the court finds that the defendant has not met his burden, the court's ruling has no preclusive effect, whether pursuant to the "law of the case" doctrine, the issue-preclusion doctrine (i.e., collateral estoppel), or any other doctrine. Such a defendant would still be free at trial to plead his claim of immunity to the jury. At trial the burden of proof is exclusively on the prosecution to establish the guilt of the defendant beyond and to the exclusion of a reasonable doubt. To earn an acquittal, the defendant need do no more than show reasonable doubt - a quantum of evidence considerably less than a preponderance. And any attempt to bar a defendant from asserting a lawful defense based on the trial court's ruling that the defendant had not sufficientlv established that defense at a pretrial hearing would no doubt run afoul of the defendant's constitutional entitlement to a fair jury trial, ***see*** U.S. Const. amend VI; Art. I Sec16, Fla. Const.

....Crucially, no one can testify to the events immediately preceding Berry's being stabbed. On the defense's theory of the case, Wyche attempted to flee the altercation before it went from merely verbal to physical; was pursued by Berry and others; and, finding himself in that last extremity from which flight would be neither possible nor availing, armed himself and did what he had to do to save his own life

If the facts are as the defense claims they are, Mr. Wyche need not rely on "Stand Your Ground;" the common law would justify him. The common law justified a defendant who discharged his duty to retreat, but was pursued by his nemesis, in using force - even force calculated to cause death or serious bodily injury - to defend himself As applied to the facts of the case at bar, the only difference between the law as it existed prior to "Stand Your Ground" and the law as it presently exists is that a defendant can now seek a pretrial judicial determination as to the validity of his act of putative self-defense (which determination, if in his favor, brings the case

against him to a permanent end) rather than having to await the decision of a jury of his peers.

If the facts are as the prosecution claims they are, Mr. Wyche cannot rely on "Stand Your Ground;" the statutory law would not immunize him. The statutory scheme entitles a defendant to stand his ground. It does not entitle him to abandon his ground, then arm himself, then hunt down his nemesis and kill him, and afterward assert a claim of immunity.

The record before me is silent when it most needs to speak. There is general consensus regarding a confrontation between Wyche and Berry, general consensus that Wyche ran from that confrontation and that Berry followed. It is there that the narrative ceases. Did Berry, or Berry and his companions, hunt Wyche down and present him with no choice but to kill or be killed? Or did Wyche arm himself and then turn upon Beny at a time when Berry had broken off the chase, or was at worst offering a reprise of the chest-pounding in which the two young men had engaged at the outset of their conflict? The record does not tell me. I can draw no conclusion. And because I can draw no conclusion, this motion must fail. The evidence is in equipoise. The defendant has not met his burden of proof.

Florida Rule of Criminal Procedure 3.190(c)(3) rovides that a defendant in a criminal case may at any time make, and the "court may at any time entertain[,] a motion to dismiss" on the grounds that the "defendant is charged with an offense for which the defendant previously has been granted immunity." The defendant who makes a "Stand Your Ground" claim asserts that, as a matter of statute law, he "previously" - *i.e.,* by previous legislative enactment - "has been granted immunity.

Dictum in the opinion of the Florida Supreme Court in *Dennis* v. *State,* 51 So.3d *456,462* (Fla. 2010) suggests that, "Florida Rule of Criminal Procedure 3.190(b) . . . provides the appropriate procedural vehicle for the consideration of a claim of [Stand Your Ground] immunity." If that is so, the defendant's present motion must be denied as waived. Fla. R. Crim. P. 3.190(c) provides that, "Unless the court grants further time, the defendant shall move to dismiss . . . either before or at arraignment" and that "every ground for a motion to dismiss that is not presented by a motion to dismiss [at arraignment, or within such time as is granted by the court at arraignment] shall be considered waived." Defendant's present motion was filed nearly a year and a half after arraignment; and although perhaps it could have been filed sooner, it is frankly inconceivable that a "Stand Your Ground" motion has ever been or will ever be filed at arraignment, or within the 15-day period customarily granted at arraignment for the filing of motions directed to the sufficiency of the charging document. If, however, as I conclude, Defendant's present motion (and indeed any motion asserting a "Stand Your Ground" claim) is brought pursuant to Fla. R. Crim. P. 3.190(c)(3) t may be brought and adjudicated at any time.